

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KELY WILKINS, et al.,

No. C 01-1402 MMC

Plaintiffs,

**ORDER GRANTING DEFENDANTS'  
MOTION FOR BIFURCATION OF TRIAL;  
VACATING HEARING**

v.

CITY OF OAKLAND, et al.,

Defendants

\_\_\_\_\_ /

Before the Court is defendants' motion, filed December 29, 2005, for bifurcation of claims at trial, pursuant to Rule 42(b) of the Federal Rules of Civil Procedure. Plaintiffs have filed opposition, to which defendants have replied. Having considered the papers filed in support of and in opposition to the motion, the Court deems the motion suitable for decision on the papers, VACATES the hearing scheduled for February 10, 2006, and rules as follows.

Defendants seek to bifurcate the trial of plaintiffs' claims in such manner that plaintiffs' claims against the two individual officers would be tried first and, if appropriate, plaintiffs' Monell claim against the City of Oakland, see Monell v. New York City Dep't of Social Services, 436 U.S. 658 (1978), would be tried thereafter. "The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition

1 and economy, may order a separate trial of any claim . . . or issues, always preserving  
 2 inviolate the right of trial by jury as declared by the Seventh Amendment . . .” Fed. R. Civ.  
 3 P. 42(b).<sup>1</sup>

4 For the reasons stated in defendants’ motion and reply, the Court finds bifurcation, in  
 5 the manner proposed by defendants, is appropriate. In particular, as defendants have  
 6 shown, the evidence relevant to the claims against the individual officers does not overlap  
 7 in any meaningful way with the evidence relevant to the municipal liability claim. Contrary  
 8 to plaintiffs’ argument, evidence of a municipality’s failure to provide training to or to  
 9 sufficiently supervise an officer is not relevant with respect to the issue of whether such  
 10 officer acted in an objectively reasonable manner in his/her use of force. See, e.g.,  
 11 Haugen v. Brosseau, 351 F. 3d 372, 387 (9th Cir. 2003) (“[T]he ‘reasonableness’ inquiry in  
 12 an excessive force case is an objective one: the question is whether the officers’ actions  
 13 are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”).

14 Further, as defendants point out, if the trier of fact finds the individual officers did not  
 15 deprive the decedent of his Fourth Amendment rights, such finding is dispositive of  
 16 plaintiffs’ municipal liability claim. See City of Los Angeles v. Heller, 475 U.S. 796, 799  
 17 (1986) (“[N]either Monell [ ] nor any other of our cases authorizes the award of damages  
 18 against a municipal corporation based on the actions of one of its officers when in fact the  
 19 jury has concluded that the officer inflicted no constitutional harm.”);<sup>2</sup> see also Fairley v.  
 20 Luman, 281 F. 3d 913, 916 (9<sup>th</sup> Cir. 2002) (“Exoneration of [the individual officer] of the

---

21  
 22 <sup>1</sup>Plaintiffs argue that their Seventh Amendment rights would be violated if their  
 23 claims were tried before separate juries. The Court need not address this argument,  
 24 however, as defendants do not seek to have plaintiffs’ claims heard before separate juries  
 but, rather, a bifurcated trial before the same jury. (See Defs.’ Reply, filed January 27,  
 2006, at 2:12-16.)

25 <sup>2</sup>Relying on Hopkins v. Andaya, 958 F. 2d 881, 888 (9<sup>th</sup> Cir. 1992), plaintiffs argue  
 26 that even if an individual officer is found not to have committed a Fourth Amendment  
 27 violation, a municipality nevertheless can be held liable on an improper training and/or  
 28 supervision theory. The language in Hopkins on which plaintiffs rely is dicta, however, as  
 the individual officer therein was not exonerated. Moreover, in light of the Supreme Court’s  
 decision in Heller as well as the Ninth Circuit cases, cited *infra*, expressly holding to the  
 contrary, Hopkins should not be read as standing for the proposition that a municipality may  
 be held liable in the absence of a constitutional violation by the individual defendant.


1 charge of excessive force precludes municipal liability for the alleged unconstitutional use  
2 of such force.”); Quintanilla v. City of Downey, 84 F. 3d 353, 356 (9th Cir. 1996) (holding  
3 where trier of fact found individual officers did not deprive plaintiff of Fourth Amendment  
4 rights, trial court “correctly entered judgment” for municipality on municipal liability claim;  
5 distinguishing case where officer’s exoneration based on qualified immunity), cert. denied,  
6 519 U.S. 1122 (1997); Scott v. Henrich, 39 F. 3d 912, 916 (9<sup>th</sup> Cir. 1994) (holding, where  
7 individual officers were entitled to judgment on ground they did not use excessive force,  
8 municipality was entitled to judgment on claim municipality failed to adequately train  
9 officers).

### 10 CONCLUSION

11 For the reasons stated, defendants’ motion for bifurcation is hereby GRANTED, and  
12 plaintiffs’ claims against the individual officers shall be tried first. If the trier of fact finds that  
13 one or more such individual defendants committed a Fourth Amendment violation, the trial  
14 will proceed before the same jury with respect to the municipal liability claim.

15 **IT IS SO ORDERED.**

16  
17 Dated: February 8, 2006

18   
19 MAKINE M. CHESNEY  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28